FILE COPY

Office-Supreme Court, U.S.
FILED
FEB 12 1960
JAMES R. BROWNING, Clerk

No. 640

In the Supreme Court of the United States

OCTOBER TERM, 1959

LENA S. TILLMAN, ADMINISTRATRIX OF THE ESTATE OF JAMES A. TILLMAN, DECEASED, PETITIONER

v.

ROBERT B. ANDERSON, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY FOR THE RESPONDENTS IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
CHARLES K. ROTHERMEL, JR.,
Assistant Attorney General,
SAMUEL D. SLADE,
V. JUDSON KLEIN,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	5
Argument	8
Conclusion	12

CITATIONS

Cases:

American and European Agencies v. *Gilliland*, 247 F. 2d 95, certiorari denied, 355 U.S. 884	8
Dayton v. *Gilliland*, 242 F. 2d 227, certiorari denied, 355 U.S. 813	8
DeVegvar v. *Gilliland*, 228 F. 2d 640, certiorari denied, 350 U.S. 994	9
First National City Bank of New York v. *Gilliland*, 257 F. 2d 223, certiorari denied, 358 U.S. 837	8
Haas v. *Humphrey*, 246 F. 2d 682, certiorari denied *sub nom. Haas* v. *Anderson*, 355 U.S. 854	8
Harris v. *Pennsylvania R. Co.*, 361 U.S. 15	11
Ludecke v. *Watkins*, 335 U.S. 160	9
Selective Draft Cases, 245 U.S. 366	10
Steingut v. *Guaranty Trust Co. of New York*, 58 F. Supp. 623, affirmed, 161 F. 2d 571, certiorari denied, 332 U.S. 807	6, 7, 9
Sunshine Coal Co. v. *Adkins*, 310 U.S. 381	10
Switchmen's Union v. *National Mediation Board*, 320 U.S. 297	9
Tillman v. *Russo-Asiatic Bank*, 51 F. 2d 1023	6
Tillman v. *Russo-Asiatic Bank*, 240 App. Div. 710, 264 N.Y.S. 714, affirmed, 264 N.Y. 421, 191 N.E. 495	6
United States v. *Balcock*, 250 U.S. 328	9

540089 60

Cases—Continued Page

United States v. *Belmont*, 301 U.S. 324 3
United States v. *National City Bank of New York*, 90 F. Supp. 448 10
United States v. *Pink*, 315 U.S. 203 3
Z & F. Assets Corp. v. *Hull*, 311 U.S. 470 9
Zakonaite v. *Wolf*, 226 U.S. 272 10

Constitution and statutes:
Constitution of the United States:
Fifth Amendment 9
Foreign Claims Settlement Commission Act of 1955, 69 Stat. 562:
Section 305(a) (22 U.S.C. 1641d(a)) 2
Section 305(a)(1) (22 U.S.C. 1641d(a)(1)) 2, 5, 6
Section 305(b) (22 U.S.C. 1641d(b)) 3, 10
Sec. 305(c) (22 U.S.C. 1641d(c)) 3
Section 314 (22 U.S.C. 1641m) 3, 8
Section 316 (22 U.S.C. 1641o) 4
Section 318 (22 U.S.C. 1641q) 4, 6, 8
International Claims Settlement Act of 1949, 64 Stat. 12:
Section 4(b) (22 U.S.C. 1623(b)) 4, 6
Section 4(h) (22 U.S.C. 1623(h)) 4, 8
Section 7(e) (22 U.S.C. 1626(e)) 5, 10
Section 7(f) (22 U.S.C. 1626(f)) 5

Miscellaneous:
95 Cong. Rec. 8840 8
95 Cong. Rec. 8845 8
95 Cong. Rec. 8847 8
95 Cong. Rec. 8853-8855 8
H. Rept. 770, 81st Cong., 1st Sess., pp. 6–8 8
H. Rept. 770, Part 2, 81st Cong., 1st Sess., p. 2 8
H. Rept. 624, 84th Cong., 1st Sess., p. 2 6
S. Rept. 800, 81st Cong., 1st Sess., pp. 5–6 8
S. Rept. 1050, 84th Cong., 1st Sess.:
p. 2 6
p. 9 6
p. 10 6
p. 12 6

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 640

LENA S. TILLMAN, ADMINISTRATRIX OF THE ESTATE OF JAMES A. TILLMAN, DECEASED, PETITIONER

v.

ROBERT B. ANDERSON, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The *per curiam* orders of the court of appeals affirming the judgment of the district court (Pet. App. 37) and denying petitioner's motion for reconsideration (Pet. App. 42–43) are unreported. The order of the district court (J.A. 49) dismissing petitioner's complaint is also unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 37) was entered on October 30, 1959. The petition for a writ of certiorari was filed on January 13, 1960.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the courts below properly ruled that they had no jurisdiction over the subject matter of a complaint seeking review of a decision of the Foreign Claims Settlement Commission denying petitioner's claim under the Foreign Claims Settlement Commission Act of 1955.

2. Whether the court of appeals was required to hear oral argument in a case in which it was convinced on the basis of appellant's brief and the record that it was without jurisdiction.

STATUTES INVOLVED

The Foreign Claims Settlement Commission Act of 1955, 69 Stat. 562, provides in pertinent part:

> SEC. 305 [22 U.S.C. 1641d]. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—
>
> (1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recov-

ered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment.[1] Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; * * *

* * * * *

(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

(c) The Commission shall give preference to the designation of the claims referred to in paragraph (1) of subsection (a) of this section, over all other claims presented to it under this title.

SEC. 314 [22 U.S.C. 1641m]. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing

[1] For the text of the Litvinov Assignment, see Pet. App. 27–28. Under the Litvinov Assignment, the Soviet Government assigned to the Government of the United States all its claims against American nationals. See *United States* v. *Pink*, 315 U.S. 203; *Guaranty Trust Co.* v. *United States*, 304 U.S. 126; *United States* v. *Belmont*, 301 U.S. 324.

officer for payments in accordance with such action.

SEC. 316 [22 U.S.C. 1641o]. The Commission shall complete its affairs in connection with the settlement of claims pursuant to section 305(a)(1) not later than two years, and all other claims pursuant to this title not later than four years, following the date of enactment of this title [August 9, 1955], or following the date of enactment of legislation making appropriations to the Commission for the payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

Pursuant to Section 318 of the Foreign Claims Settlement Commission Act (22 U.S.C. 1641q), the following provisions of the International Claims Settlement Act of 1949, 64 Stat. 12, are applicable to claims under Section 305(a)(1):

SEC. 4 [22 U.S.C. 1623]. * * *

(b) Each decision by the Commission pursuant to this Act * * * shall consfitute a full and final disposition of the case in which the decision is rendered.

* * * * *

(h) * * * The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

* * * * *

SEC. 7 [22 U.S.C. 1626]. * * *

(e) Any person who makes application for any such payment shall be held to have consented to all provisions of this Act.

(f) Nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.

STATEMENT

Under the Foreign Claims Settlement Commission Act of 1955, 69 Stat. 562, Congress empowered the Foreign Claims Settlement Commission to make awards from a fund representing proceeds of collection by the United States of claims assigned to it by the Soviet Government under the Litvinov Assignment of 1933. On March 22, 1956, petitioner, as administratrix of the estate of James A. Tillman, filed with the Commission a claim against this fund under Section 305(a)(1) of the Act, *supra*, pp. 2–3. This claim was based upon a 1935 default judgment of a New York court for $210,675.05 on behalf of petitioner's decedent against the Russo-Asiatic Bank (J.A. 24–25), and a warrant of attachment issued in 1927 upon the latter's assets (J.A. 16–18). On August 1, 1956, the Commission issued a proposed decision (J.A. 32–37) denying petitioner's claim on the ground that petitioner had failed to prove that her claim came within Section 305(a)(1) which requires that the

claim "originally accru[e] in favor of a national of the United States * * *."[2]

The Commission stated that it had requested such evidence from petitioner without success (J.A. 33)[3] and had itself conducted an independent investigation (J.A. 34–36), as contemplated by the statute (22 U.S.C. 1623(b), 1641(q)), which indicated that at least part of petitioner's claim did not originate with Tillman (J.A. 36–37). No determination was made by the Commission as to whether petitioner had satisfied the additional requirement of Section 305(a)(1) that a "judgment or warrant of attachment * * *

[2] This provision was enacted in order to give highest priority to American claims in a fund which Congress was certain would be sufficient to satisfy only a small percentage of the total claims. H. Rept. 624, 84th Cong., 1st Sess., p. 2; S. Rept. 1050, 84th Cong., 1st Sess., pp. 9–10, 12. And Congress clearly intended that no general appropriations be used either in satisfaction of claims or for administration expenses. *Id.* at p. 2.

[3] Petitioner's inability to furnish such evidence may be inferred from the following account appearing in the opinion of Judge Rifkind in *Steingut* v. *Guaranty Trust Co. of New York*, 58 F. Supp. 623, 642 (S.D.N.Y.), affirmed, 161 F. 2d 571 (C.A. 2), certiorari denied, 332 U.S. 807: "On September 23, 1935, he [James A. Tillman] obtained a default judgment in the Supreme Court, Queens County, for $210,675.05. His claim arose out of the alleged dishonor of a check drawn by him for 72,000 Rubles on Russo-Asiatic Bank, Petrograd, on September 18, 1918 and included additional claims *assigned to him by Russian nationals* in 1927" (emphasis added). Moreover, prior to the default judgment in 1935, two federal courts and three state courts each had unanimously ruled on the merits denying recovery to Tillman for his own claim arising out of the dishonor on September 18, 1918, of the 72,000 ruble draft. *Tillman* v. *Russo-Asiatic Bank*, 51 F. 2d 1023 (C.A. 2, 1931); *Tillman* v. *Russo-Asiatic Bank*, 240 App. Div. 710, 264 N.Y.S. 714 (2d Dept., 1933), affirmed, 264 N.Y. 421, 191 N.E. 495 (1934).

lien was obtained by a national of the United States, prior to November 16, 1933" [4] (J.A. 37, 41, 42).

The Commission held a hearing on September 13, 1956, on the proposed order (J.A. 43). Since the Commission continued to consider the record "insufficient" as to the origin of petitioner's claim (J.A. 43), it issued an order which stated that unless petitioner, within ten days, sustained her burden of proving that the claim originally arose in favor of an American national, the Commission would affirm its proposed decision (J.A. 38–41). Still unsatisfied, the Commission, on November 14, 1956, issued its final decision denying petitioner's claim (J.A. 41–44).

Petitioner then instituted declaratory judgment proceedings in the District Court for the District of Columbia against the Secretary of the Treasury and the members of the Foreign Claims Settlement Commission seeking judicial review of the Commission's determination (J.A. 14–15). Upon motion by the government, the district court (Sirica, J.) dismissed the complaint "on the ground that the Court lacks jurisdiction over the subject matter of the cause" (J.A. 49). An appeal was taken, and after the filing of petitioner's brief and a joint appendix, the Court of Appeals for the District of Columbia Circuit affirmed the judgment of the district court without hearing oral argument. Petitioner's motion for reconsideration was denied.

---

[4] Petitioner concededly did not obtain a judgment until 1935, and in *Steingut* v. *Guaranty Trust Co. of New York*, *supra*, 58 F. Supp. at 643, the court specifically held that Tillman did not have an attachment in effect against Russo-Asiatic property as of November 16, 1933.

1. Congress, in establishing the Foreign Claims Settlement Commission, provided that "The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by * * * any court by mandamus or otherwise * * *."[5] This petition constitutes the sixth attempt to have this Court review decisions of the Court of Appeals for the District of Columbia Circuit adhering to that express statutory provision. *First National City Bank of New York* v. *Gillilland*, 257 F. 2d 223, certiorari denied, 358 U.S. 837; *American and European Agencies* v. *Gillilland*, 247 F. 2d 95, certiorari denied, 355 U.S. 884; *Haas* v. *Humphrey*, 246 F. 2d 682, certiorari denied *sub nom. Haas* v. *Anderson*, 355 U.S. 854; *Dayton* v. *Gillilland*, 242 F. 2d 227, certiorari denied, 355 U.S. 813; *De-*

[5] Sec. 314, Foreign Claims Settlement Commission Act of 1955, 22 U.S.C. 1641m, *supra*, p. 3; see Sec. 318 of that Act, 22 U.S.C. 1641q, and Sec. 4(h), International Claims Settlement Act of 1949, 22 U.S.C. 1623(h), *supra*, p. 4.

The fixed Congressional purpose to accord absolute, unqualified finality to the decisions of the Commission is further confirmed by the legislative history of the Foreign Claims Settlement Commission Act. The committee reports in both Houses specifically noted the finality provisions (S. Rept. 800, 81st Cong., 1st Sess., pp. 5–6; H. Rept. 770, 81st Cong., 1st Sess., pp. 6–8); the minority report in the House took specific exception to the finality provisions (H. Rept. 770, Part 2, 81st Cong., 1st Sess., p. 2); a major heading in the presentation of the legislation by its sponsors on the floor of the House was called "Finality of Awards" (95 Cong. Rec. 8840); and the House, after considerable debate, rejected an amendment by Congressman Keating, which would have provided judicial review (95 Cong. Rec. 8853–8855). See also 95 Cong. Rec. 8845, 8847.

Vegvar v. *Gilliland*, 228 F. 2d 640, certiorari denied, 350 U.S. 994. And this Court has repeatedly upheld the constitutional power of Congress to deny judicial review of such an administrative agency's determinations. See, *e.g.*, *Ludecke* v. *Watkins*, 335 U.S. 160; *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297; *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470; *United States* v. *Babcock*, 250 U.S. 328.

The only feature differentiating the instant case in any way from the five previous cases decided by the court of appeals below is that here petitioner phrases her objections to the Commission's determination in terms of constitutional issues. We submit, however, that these contentions are completely unsubstantial.

(*a*) Petitioner claims (Pet. 3, 7, 14–15) that her property was taken by the Federal Government for non-public purposes and without just compensation in violation of the Fifth Amendment to the Constitution. The "property" allegedly taken seems (see Pet. 15) to have been funds of the Russo-Asiatic Bank on deposit with the Guaranty Trust Company of New York and the National City Bank of New York, subject to a warrant of attachment in favor of petitioner's decedent. Petitioner, however, fails to mention that the "taking" of these funds by the government was ordered by a federal court in a case in which petitioner was a party and in which it was conclusively determined that petitioner's right to the deposits was subordinate to that of the United States. *Steingut* v. *Guaranty Trust Co. of New York*, 58 F. Supp. 623, 642–643 (S.D.N.Y.), affirmed, 161 F. 2d

571 (C.A.2), certiorari denied, 332 U.S. 807; see *United States v. National City Bank of New York*, 90 F. Supp. 448, 450 (S.D.N.Y.). Accordingly, under the principles of collateral estoppel, petitioner cannot now claim that her property was taken by the United States.

(*b*) Petitioner's full faith and credit and separation of powers arguments (Pet. 7, 13–14, 16–17) likewise are completely without substance. The Commission was under an obligation to extend full faith and credit[*] to the 1935 default judgment in the New York Supreme Court only with respect to issues which that court determined. The dispositive issue before the Commission—the nationality of the person(s) to whom the claim asserted by petitioner first accrued—was not before the New York court. As to any separation of powers problem, quite apart from the fact that petitioner has waived any right she had to challenge the statutory scheme (see 22 U.S.C. 1626(e), *supra*, p. 5), there can be no serious question as to the constitutional power of the Commission to rule on the applications submitted to it. Cf. *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381, 400; *Selective Draft Law Cases*, 245 U.S. 366, 389; *Zakonaite* v. *Wolf*, 226 U.S. 272, 275.

2. Petitioner points to the failure of the court of appeals to order oral argument on her appeal and

[*] See Sec. 305(b) of the Foreign Claims Settlement Act of 1955, 22 U.S.C. 1671d(b), *supra*, p. 3.

urges that "to allow one appellant the benefit of an oral argument and deny such benefit to other appellants, is to deprive such appellant of equal protection of law and due process thereof" (Pet. 11). This Court, however, often disposes of cases appealed to it without hearing argument, and, indeed, will sometimes reverse without affording the party winning below an opportunity to argue the merits. See *Harris* v. *Pennsylvania R. Co.*, 361 U.S. 15, 17. It is thus clear that the Constitution does not guarantee every litigant able to pay the filing fees in an appellate court a right to oral argument—particularly where, as in the instant case, she has had the opportunity to submit a brief.

Petitioner also argues (Pet. 10–12) that the Federal Rules of Civil Procedure and the Rules of the United States Court of Appeals for the District of Columbia Circuit required the Court of Appeals to hear oral argument in this case. We submit, however, that the rules which petitioner cites completely fail to support her position. Moreover, the court of appeals acted here on motion of the government to dismiss or affirm (see Pet. App. 29–31, 37), and Rule 31(j) of the Rules of the United States Court of Appeals for the District of Columbia Circuit unambiguously provides that such motions "shall be considered and ruled upon in chambers, and no oral argument thereon will be permitted unless directed by the court."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General,
SAMUEL D. SLADE,
V. JUDSON KLEIN,
Attorneys.

FEBRUARY 1960.

U.S. GOVERNMENT PRINTING OFFICE: 1960